United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

Court of Appeals, District of Columbia.

APRIL TERM, A. D. 1902.

No. 1220. **165**

JAMES S. BARTON KEY, APPELLANT,

vs.

WILLIAM F. ROBERTS, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO SET ASIDE JUDGMENT AND GRANT A REHEARING HEREIN.

HENRY P. BLAIR,
FREDERIC D. MCKENNEY,
J. S. FLANNERY,
Attorneys for Appellant.

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Now comes J. S. Barton Key, by his attorneys, and respectfully moves this honorable court to set aside the judgment heretofore rendered herein on motion to dismiss this cause and to grant a reconsideration thereof, and as ground of such motion respectfully shows that this honorable court dismissed the appeal in this cause for want of jurisdiction, on the authority of its decision in the case of Groff *vs.* Miller, No. 1199, said decision turning upon the construction placed by this honorable court upon the conflicting provisions of

sections 82 and 226 of the Code of Laws for the District of Columbia, the court holding that the reasonable interpretation of such conflicting provisions necessitated the conclusion that this court had jurisdiction to hear and determine cases originating before justices of the peace only where said causes had been moved into the supreme court of the District of Columbia from the justice of the peace by certiorari and not by appeal.

By an act "To amend an act entitled 'An act to establish a Code of Law for the District of Columbia,'" which became a law on the 1st day of July, 1902, the Congress expressly provided that the Code of Law for the District of Columbia should be amended in the following particulars:

1. By striking out the whole of section 82;

2. By striking out the quotation marks in the third and fourth lines of section 226;

The effect of such amendments being to strike out the provision heretofore occurring in the Code to the effect that:

> "In no case appealed from a justice of the peace shall there be a further appeal from the judgment of the supreme court,"

and leaving the positive law upon this subject as follows:

> "Any party aggrieved by any final order, judgment or decree of the supreme court of the District of Columbia or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said Court of Appeals and upon such appeal the Court of Appeals shall review such order, judgment or decree, and affirm, reverse or modify the same, as shall be just, except as provided in the following sections * * *"

Such amendments by the Congress in the manner and form in which they were made must be regarded as a legislative interpretation by the Congress itself of its purposes

and intentions respecting the conflicting provisions covering appeals from justices of the peace, as the same heretofore appeared in the Code, and must reasonably be taken as an express declaration by Congress that it was its intention, as expressed in former section 226 of the Code, to permit an appeal to the Court of Appeals from the judgment of the supreme court of the District in any and all cases appealed to said supreme court from a justice of the peace, thereby including in the privilege of appeal, as seems only natural and proper, cases technically appealed from justices of the peace as well as those removed into the supreme court by certiorari.

In view of this express declaration, it is respectfully submitted that the right intended to be conferred by Congress, as declared in the amendments, should not be denied to the appellant in this case, but that he should be permitted to have the benefit of the judgment of this court upon a question of general moment and of considerable gravity to himself.

Had this case been permitted to come before this honorable court in its regular order, there is no doubt that the appellant would have been accorded the full benefit to be derived from the amendments to the Code above referred to; and as the case is still within the control of the court, it is respectfully submitted that the summary proceedings on motion to dismiss should not be permitted to deny a right so expressly conferred.

HENRY P. BLAIR,
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Attorneys for Appellant.